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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 657

W. T. ODELL, R. R. IVEY, J. A. RUSSELL, CLEMMIE G. TAYLOR, AND R. M. DENNIS,
Petitioners,

vs.

HUMBLE OIL & REFINING COMPANY,
A CORPORATION

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

W. D. GIRAND, JR.,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 657

W. T. ODELL, R. R. IVEY, J. A. RUSSELL, CLEMMIE G. TAYLOR, AND R. M. DENNIS,
Petitioners,

vs.

HUMBLE OIL & REFINING COMPANY,
A CORPORATION,
Respondent

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Supreme Court of the United States:

W. T. Odell, R. R. Ivey, J. A. Russell, Clemmie G. Taylor and R. M. Dennis jointly pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

Opinion Below

No opinion was written by the District Court in this case. The opinion of the United States Court of Appeals for the Tenth Circuit has not been reported, but appears in the printed record at pages 20 to 27 inclusive. The opinion was entered on January 2, 1953.

Summary Statement of Matter Involved

A civil action in five counts was filed in the United States District Court for the District of New Mexico (R. 3). Each of the petitioners sought judgment for $100,000.00 actual damage and $100,000.00 punitive damage (R. 9). The different causes of action, stated in separate counts as to each petitioner, were joined under Rule 20 of the Rules of Civil Procedure for the United States District Court. Federal jurisdiction was predicated on the jruisdictional amount and diversity of citizenship (R. 3).

Plaintiffs were employees of Humble Oil & Refining Company, and had been such employees for periods ranging from fifteen to twenty-two years (R. 1, 8, 9). Humble Oil & Refining Company was indicted in the United States District Court for the District of New Mexico on a criminal indictment in two cases, charging Humble with violating the rules and regulations of the Federal Petroleum Board with respect to certain oil production records and reports (R. 5). Plaintiffs were subpoenaed by the government, and testified as witnesses for the government in the criminal cases (R. 6). Humble Oil & Refining Company was convicted on the criminal acts charged in the indictments (R. 6). The conviction has since been affirmed. Petitioners were discharged by the respondent, Humble Oil & Refining Company, because they appeared and testified as witnesses for the government in the criminal cases against the respondent.

The Amended Complaint of each petitioner was bottomed upon the proposition that the discharge of petitioners by reason of their having testified as witnesses for the government in the criminal cases against their employer was a violation of Title 18 U. S. C. A., Section 1503, and of the public policy of the United States of America, in that by such discharge petitioners were injured in their property

rights by reason of their having appeared and testified as witnesses in the United States District Court for the District of New Mexico.

The employer-employee relationship between petitioners and respondent was governed by the terms of a collective bargaining agreement between the Employees' Federation of Humble Oil & Refining Company, the bargaining agent for the employees of respondent, and the respondent (R. 10). This contract provided in Section 10 (R. 14) the reasons for which an employee could be discharged. Testifying against the employer was not one of the reasons given for permissive discharge. The collective bargaining agreement provided in Paragraph 2 (R. 11) that it could be cancelled either by the Employees' Federation or by Humble Oil & Refining Company on thirty days notice in writing.

Respondent moved to dismiss the Amended Complaint and the different counts thereof on the grounds that the Amended Complaint failed to state claims upon which relief could be granted (R. 16). The District Court for the District of New Mexico, Honorable Carl A. Hatch, Judge, presiding, sustained the motion and dismissed the Amended Complaint and the various counts thereof (R. 17). Appeal was taken to the United States Court of Appeals for the Tenth Circuit, and the decision of the District Court was affirmed (R. 20). Judgment was entered on January 2, 1953 (R. 27).

Jurisdiction

The jurisdiction of this Court is invoked under the Judicial Code (28 U. S. C. A., Section 1254, Sub-Paragraph 1). The petition is within time, judgment having been entered in the United States Court of Appeals for the Tenth Circuit on January 2, 1953 (R. 27). (28 U. S. C. A., Section 2101, Sub-Paragraph C.)

Questions Presented

1

Does a witness in the Federal Court who is discharged by his employer in violation of Title 18 U. S. C. A., Section 1503, have a civil cause of action for damage to his property rights resulting from such discharge?

2

Is Title 18 U. S. C. A., Section 1503, a statute designed, in part, for the protection of witnesses in the Federal Courts as a class in their person and property rights to the extent that they are afforded a civil cause of action for damages to such rights?

3

Does a collective bargaining agreement between an employer and a union afford to an individual employee working under such agreement a property right in his job within the meaning of Title 18 U. S. C. A., Section 1503?

4

Does a collective bargaining agreement between a union and an employer which provides that it may be cancelled upon thirty days notice by either the union or the employer permit the employer to cancel the contract as to an individual employee only, on thirty days notice?

Reasons for the Allowance of the Writ

1

This action presents an important question of federal law which has not been, but should be settled by the Supreme Court of the United States. Petitioners were discharged by their employer because they testified against their employer under subpoena as witnesses for the government in a criminal case in the United States District Court for the

District of New Mexico. This fact is properly plead (R. 6), and for the purpose of this appeal is taken as true. (Opinion of the Circuit Court of Appeals for the Tenth Circuit, R. 20). The question of whether or not petitioners have a civil right of action for damages to their property rights against their employer by reason of their discharge in violation of Title 18, U. S. C. A., Section 1503, was a question of first impression in the Federal Courts with the decision of the United States Court of Appeals in this case, and as stated by that Court: "As far as this phase of the statute is concerned, it seems to be a qeustion of first impression" (R. 25).

2

The decision of the United States Court of Appeals for the Tenth Circuit in this case insofar as it holds that Title 18, U. S. C. A., Section 1503 was not designed in part for the protection of witnesses in the Federal Courts is in direct conflict with the holding of the Ninth Circuit in the case of *Catrino* v. *United States*, 176 F. (2d) 884; the decision of the Court of Appeals for the Fifth Circuit in the case of *Samples* v. *United States*, 121 F. (2d) 263; the decision of the United States Court of Appeals for the Eighth Circuit in the case of *Kloss* v. *United States*, 77 F. (2d) 462, and with the decision of the United States Court of Appeals for the Tenth Circuit in the case of *Broadbent* v. *United States*, 149 F. (2d) 580, all of which cases hold that the statute in question is designed in part for the protection of witnesses in the Federal Courts. The question presented by this conflict is an important question of federal law which has not been, but should be settled by the Supreme Court of the United States.

3

The holding of the United States Court of Appeals for the Tenth Circuit in this case insofar as it holds that a provision in a collective bargaining agreement to the effect that

either the union or the employer may terminate the same on thirty days notice in writing empowers the employer to terminate the contract on thirty days notice as to an individual employee is in direct conflict with the holding of the United States Court of Appeals for the Fifth Circuit in the case of *Yazoo & M. V. Railroad Company* v. *Webb*, 64 F. (2d) 902. The question presented by this conflict is an important question of federal law which has not been, but should be settled by the Supreme Court of the United States.

Conclusion

WHEREFORE, Petitioners pray that this Court issue a Writ of Certiorari directed to the United States Court of Appeals for the Tenth Circuit, and that the judgment of the United States Court of Appeals for the Tenth Circuit and of the United States District Court for the District of New Mexico be reversed by this Honorable Court.

W. T. ODELL,
R. R. IVEY,
J. A. RUSSELL,
CLEMMIE G. TAYLOR and
R. M. DENNIS,
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Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinion Below

No opinion was written by the District Court in this case. The opinion of the United States Court of Appeals for the Tenth Circuit has not been reported, but will be found in the printed record at Pages 20 to 27, inclusive.

Jurisdiction

The jurisdiction of this Court is invoked under the Judicial Code (Title 28 U.S.C.A., Section 1254 Sub-Paragraph 1). The petition is within time, judgment having been entered in the United States Court of Appeals for the Tenth Circuit on January 2, 1953 (R. 27) (28 U.S.C.A., Section 2101, Sub-Paragraph C.)

Statement of the Case and Questions Presented

For statement of the case and questions presented, see the foregoing Petition for Writ of Certiorari (Pages 2, et sequa).

Assignments of Error

1

The United States Court of Appeals for the Tenth Circuit erred in holding that Title 18 U.S.C., Section 1503 was designed solely for the protection of the administration of justice and did not have as one of its purposes the protection of the property rights of witnesses in the Federal Courts.

2

The United States Court of Appeals for the Tenth Circuit erred in holding that Title 18 U.S.C.A., Section 1503 was not designed for the protection of witnesses in the Federal

Courts as a class, and that a member of such class had no civil cause of action for damages to his property rights caused by a violation of that statute.

3

The United States Court of Appeals for the Tenth Circuit erred in holding that an employer has no civil liability to a discharged employee when he has discharged such employee in violation of a penal statute enacted for the benefit of a class of which the employee was a member.

4

The United States Court of Appeals for the Tenth Circuit erred in holding that a collective bargaining agreement between a union and an employer which provides that either party may terminate the same upon thirty days notice in writing permits the employer to terminate the contract as to an individual employee upon thirty days notice in writing.

Summary of Argument

The argument under four points is directed to the proposition that Title 18 U.S.C.A., Section 1503, commonly known as the obstruction of justice statute, is a statute designed for the protection of the administration of justice and for the protection of the property rights of witnesses before and after they testify in the Federal Courts. The petitioners in this case were discharged by their former employer, the respondent, as a result of their having appeared and testified as witnesses for the government in criminal cases pending against the respondent in the United States District Court for the District of New Mexico. These facts are well plead and on the motion to dismiss the Amended Complaint and in this proceeding are to be taken as true. The Courts below held in substance that Congress by the enactment of

this statute did not afford to witnesses as a class any protection in their personal or property rights, and that in any event the petitioners would each be limited to recover the sum of Five Hundred Dollars, the amount of their wages for one month by reason of the provision of the collective bargaining agreement governing the terms of the employment that permitted either the union or the employer to cancel the collective bargaining agreement upon thirty days notice in writing. It is the position of the petitioners in the following argument that the statute in question was designed in part for the protection of witnesses in the Federal Courts as a class. That the member of a class for whose protection a statute is enacted has a cause of action for damage to property rights protected by such statute caused by a violation of such statute. It is the further position of the petitioners that the thirty day cancellation clause in the collective bargaining agreement between the union and the respondent does not permit the termination of the contract on thirty days notice as to an individual employee, but only permits the termination of the contract in its entirety.

ARGUMENT

Point 1

Title 18 U.S.C.A., Section 1503 Was Designed in Part for the Protection of Witnesses, as a Class, in Their Property Rights.

The statute insofar as is pertinent to this case is as follows:

> "Whoever * * * injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein * * * shall be fined not more

than $5,000.00 or imprisonment of not more than 5 years, or both."

The statute before its amendment in 1945 had been construed by the Circuit Court of Appeals for the Eighth Circuit in the case of *Kloss* v. *United States*, 77 F. (2d) 462, and by the United States Court of Appeals for the Fifth Circuit in the case of *Samples* v. *United States*, 121 F. (2d) 263, in the following language:

> "(1, 2) The statute is one of the most important laws ever adopted. It is designed to protect witnesses in Federal Courts and also to prevent a miscarriage of Justice by corrupt methods. It is not necessary to its enforcement that a witness is prevented from testifying by threats or force. If a witness is corruptly persuaded to absent himself or to testify falsely the act is violated. It is immaterial whether he was subpoenaed, if he intended to testify. Walker v. United States, 8 Cir., 93 F. 2d 792."

This language was adopted by the United States Court of Appeals for the Ninth Circuit in *Catrino* v. *United States*, 176 F. (2d) 884, and by the United States Court of Appeals for the Tenth Circuit in the case of *Broadbent* v. *United States*, 149 F. (2d) 580. The Court below rejected the authority of these cases on the grounds that they were criminal cases (R. 25). The purpose for which a statute is enacted remains the same whether or no the case being decided by the Court is a civil or a criminal case. If the statement of the purpose of the act in the decisions of the Courts of Appeal for the Fifth, Eighth, Ninth and Tenth Circuits in prior decisions is taken as stated in the decisions, the decision in this case is in direct conflict with those decisions.

The Court below (R. 25) stated that the decisions above referred to were after the 1945 Amendment. Except for the *Catrino* case, those decisions construed the statute as it

existed prior to the 1945 Amendment. The statute as it existed before 1945 had been construed to apply only to pending cases. *Pettibone* v. *U. S.* (1893) 13 S. Ct. 542, 148 U. S. 197, 37 L. Ed. 419; *United States* v. *Thomas* (District Court of Virginia, 1891), 47 F. (2d) 807; *United States* v. *McLeod* (Circuit Court Ala. 1902), 119 Fed. 417.

For many years prior to the 1945 Amendment there had been in effect a conspiracy statute which applied both before and after the pendency of litigation (Criminal Code, Section 136 18 U. S. C. A., 241). Under this conspiracy statute a civil cause of action was afforded to a party injured by its violation under the provisions of Title 8 U. S. C. A., Section 47, Paragraph 2. The purpose of the 1945 Amendment was stated in the report of the Senate Judicial Committee to be contained in a letter from the Attorney General addressed to the Chairman of the Judicial Committee, U. S. Code Congressional Service, 79th Congress, First Session, 1945, Page 723. In that letter it was stated that the purpose of the amendment was to make criminal the substantive offense of injuring a witness, court officer, or juror after he had acted as such.

In the *Pettibone*, *McLeod* and *Thomas* cases, *supra*, the statute was given no effect whatever after the termination of the litigation on the theory that after justice had been administered, and the processes of the Court had ceased, the statute could afford no protection to the administration of justice. The amendment recognized the necessity of extending protection to witnesses in their personal and property rights after their appearance as witnesses, after the termination of the case, and after justice had been administered.

It could well be said that the only purpose of the 1945 Amendment was to afford protection to witnesses, court officers, or jurors after they had acted because after justice

had been administered the statute could afford no protection to the administration of justice.

We, therefore, submit that the statute in question had as one purpose the protection of witnesses in their property rights as distinguished from the purpose of protecting the administration of justice. Certainly, it presents an important question of federal law that has not been decided by this Court. This case upon the point involved, from a civil liability standpoint, is one of first impression, according to the statement of the Court below (R. 25), and so far as counsel has been able to determine. If the rights asserted in this action by these petitioners are denied, the administration of justice in the Federal Courts will receive a mortal blow. A witness in the Federal Court who is required, as these men were required, to testify against his employer will be utterly unable to recoup financial damage caused to him by the unlawful act of a convicted employer. True, the act of the employer will be criminal, but the witness, however great his financial damage, will have no remedy. As in this case, such witness can suffer the loss of his means of livelihood without remedy. We believe that the processes of the Federal Court must afford him the protection that is here sought.

POINT 2

Title 18 U.S.C.A., Section 1503 Is Designed, in Part, for the Protection of Witnesses in the Federal Courts as a Class and Affords to Such Witnesses a Civil Cause of Action for Damages to Their Property Rights Caused by a Violation of That Statute.

This case is bottomed upon the premise that Title 18 U. S. C. A., Section 1503 was enacted, in part, for the protection of witnesses in the Federal Court as a class of people. That a member of a class for whose protection a

criminal statute is enacted can maintain a civil cause of action for damages to his property rights resulting from such violation.

This action arose in the jurisdiction of New Mexico where the legal proposition stated above was recognized by the Supreme Court of that state in the case of *Pettes* v. *Jones*, 41 N. M. 167, 66 Pac. 2d 967, in the following language:

> "Not every violation of a legislative enactment will create civil liability. The rules for determining civil liability from the violation of a statute are thus set forth in Restatement of the Law, Torts, Negligence:
>
> 'Sec. 286. The violation of a legislative enactment by doing a prohibited act, or by failing to do a required act, makes the actor liable for an invasion of an interest of another if:
>
> (a) The intent of the enactment is exclusively or in part to protect an interest of the other as an individual; and
>
> (b) the interest invaded is one which the enactment is intended to protect; and,
>
> (c) where the enactment is intended to protect an interest from a particular hazard, the invasion of the interests results from that hazard; and,
>
> (d) the violation is a legal cause of the invasion, and the other has not so conducted himself as to disable himself from maintaining an action."

To the same effect are the following cases:

Kardon v. *National Gypsum Co.*, 69 Fed. Supp. 513;
Remar v. *Clayton Securities Corp.*, 81 F. (2d) 1014;
McComb v. *Frank Scerbo & Sons, Inc.*, 80 Fed. Supp. 457, affirmed, 177 F. (2d) 137;
Beard v. *Franklin*, 141 F. (2d) 238;
Barsness v. *Teigen*, 238 N. W. 161, 76 A. L. R. 1317.

The Court below rejected the authority of these cases involving the National Safety Appliance Act, the Securities

Exchange Act, and the Fair Labor Standards Act, in the following language:

> "There is a group of cases all dealing with regulatory measures for the express benefit of a class in which it has been held that the penal provision of the statute was not the exclusive remedy for its violation but that any person injured by its violation could maintain a cause of action for damages suffered. Texas & Pacific Ry. Co. v. Rigsby, supra, centered around the National Safety Appliance Act; Kardon v. National Gypsum Co., 69 F. Supp. 512, involved a violation of the Securities Exchange Act; McComb v. Frank Scerbo and Sons, 80 F. Supp. 457, involved the Fair Labor Standards Act. All of these Acts were passed for the special benefit of the group covered thereby."

We assert that the obstruction of justice statute was passed for the benefit of the persons protected by that statute and for their special benefit in addition to the purpose of protecting the administration of justice.

The Securities and Exchange Act was passed primarily for the purpose of giving a government agency an effective method of reducing the amount of a nation's credit resources which could be directed by speculation to the stock market. The protection of investors was a by-product of the main purpose of the act, yet the Federal Courts have consistently afforded Civil remedies to persons injured by a violation of that act. The proposition is clearly stated in *Remar* v. *Clayton Securities Corp.*, 81 Fed. Supp. 1014, as follows:

> "II. The second question is whether, if Clayton violated Para. 7(c) of the Securities and Exchange Act, 48 Stat. 887, 15 U. S. C. A. Para. 78g, the violation gives plaintiff as a private person a right of action to recover from defendant on account of injuries plaintiff sustained as a proximate consequence of Clayton's violation.

(2) The Securities and Exchange Act does not expressly give a right or remedy to a private person injured by Para. 7(c) of that Act. But such a right may nonetheless be implied. Cf. Beard v. Franklin, 2 Cir., 141 F. 2d 238; Goldstein v. Groesbeck, 2 Cir., 142 F. 2d 422, 154 A. L. R. 1285; Downing v. Howard, 3 Cir. 162 F. 2d 654, 658; Kardon v. National Gypsum Co., D. C. E. D. Pa., 69 F. Supp. 512, Id., D. C. E. D. Pa., 73 F. Supp. 798. See Note, 61 Harv. L. Rev. 858. The general principle regarding civil liability for violations of prohibitory statutes has been put with precision in Restatement, Torts, Para. 282. Broadly stated, the rule is that where defendant's violation of a prohibitory statute has caused injury to plaintiff the latter has a right of action if one of the purposes of the enactment was to protect individual interests like the plaintiff's.

(3) That the rule applies to the case at bar. Undoubtedly 'the main purpose' of Para. 7 of the Securities and Exchange Act was 'to give a government credit agency an effective method of reducing the aggregate amount of the nation's credit resources which can be directed by speculation into the stock market.' House Com. Rep. 73rd Cong., 2nd Sess. No. 1383. But Congress recognized that 'protection of the smaller speculator by making it impossible for him to spread himself too thin * * * will be achieved as a by-product of the main purpose.' Ibid. In short, the intent of the enactment was in part to protect an individual like plaintiff from losing his equities in stocks pledged to a broker, dealer or bank, due to his having a lower margin than the level approved by the Federal Reserve Board."

The National Safety Appliance Act, as we understand it, was enacted not only for the safety of the employees of the railway company, but for the safety of the travelling public. The Fair Labor Standards Act certainly has a broader public purpose than that sought to be given it by the decision of the Court below. It was passed primarily to strengthen

the economy of the nation, and not only for the purpose of increasing the wages of individual employees.

Petitioners submit that the Court of Appeals erred in holding that Title 18 U. S. C. A., Section 1503 did not afford them a civil cause of action for damage to their property rights caused by its violation. Petitioners submit that they are entitled to have a Writ of Certiorari by reason of the conflict between the decision below and the decisions of the Federal Courts, including the United States Supreme Court, cited under this point, and further, that the question presented is so important to the administration of justice in the Federal Courts that it should be decided by this Court.

POINT 3

An Employee Who Is Discharged by His Employer in Violation of a Penal Statute Enacted for the Benefit of a Class of Which the Employee Is a Member Has a Civil Right of Action for Damages Caused by His Discharge.

The Court below held an employer had an absolute right to discharge an employee. That the only cause of action in such case was for breach of contract for which punitive damage could not be recovered, in the following language:

> "It is the universally recognized rule that in the absence of a contract or statutory provisions an employer may discharge an employee without cause or reason or for any cause or reason. So also it has been held by the overwhelming weight of authority that the discharge of an employee in violation of his contract irrespective of the motive therefor constitutes only a breach of contract and not a tort and thatt he recoverable damage are limited to those flowing from the contractural breach and that no punitive damages are recoverable no matter what the motive that prompted the discharge. The only exception to the rule is where the wrongful discharge is tinctured with fraud. But

> for obvious reasons motive for discharge alone does not partake of any of the elements necessary to constitute fraud" (R. 26).

The error of the Court's decision is apparent. In the instant case the discharge is in violation of a contract and of a statute. The tort arises in this case by reason of the injury to the property rights of petitioners as witnesses in the Federal Courts in violation of the statute that has been quoted. That petitioners as third party beneficiaries of the collective bargaining contract have a right to maintain a cause of action as the beneficiaries of that contract is settled in New Mexico by the case of *Johnson* v. *Armstrong & Armstrong*, 41 N. M. 206, 66 Pac. 2d 992. It is a doctrine recognized in the Tenth Circuit in the case of *Beeler* v. *Chicago R. I. & P. Railway Co.*, 169 Fed. 2d 557. A leading case is from the Ninth Circuit case of *MacKay* v. *Loew's, Inc.*, 182 Fed. 2d 170.

If the employee has an interest in his job that will permit him to maintain an action for breach of contract in violation of the terms of a collective bargaining agreement, certainly that job in such an instance is a property right within the meaning of Section 1503. If that property right is destroyed, then petitioners have a right to maintain their action for its destruction. That this action might be a new action does not affect the right to maintain it. This Court stated the doctrine in *Bell* v. *Hood*, 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939, as follows:

> "Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that Courts will be alert to adjust their remedies so as to grant the necessary relief."

The doctrine is stated by Judge Hand, of the Circuit Court of Appeals for the Second Circuit, in the case of *Bomar* v. *Keyes*, 162 F. 2d 136 (Certiorari Denied, 68 S. Ct.

166, 332 U. S. 825, 92 L. Ed. 400. Rehearing denied, 68 S. Ct. 266, 322 U. S. 845, 92 L. Ed. 416), in the following language:

> "(5) We start with the assumption that it was Keyes's complaint which caused the Board of Education to discharge the plaintiff, and that the ground of the discharge was her service upon a federal jury. If so, both Keyes and the Board united to cause pecuniary loss to the plaintiff by an act which the statute had made a legal wrong: Keyes, by instigating the Board, the Board by acting upon her instigation. We do not mean to suggest that a teacher may absent herself from her work indefinitely, and serve on a jury without regard to her duty; i.e., that she may choose her own time or stay away as long as she pleases. Certainly there are 'reasonable' limits to the exercise of her privilege; but the question whether she kept within such limits we cannot decide now; it must be tried, for all we have is that her service as such was the ground for her discharge. That wrong is independent of any breach of contract, and would be the same, if Keyes had induced the Board not to employ the plaintiff; indeed, we assume that her discharge by the Board was not a breach of contract at all. Nevertheless, it may have been the termination of an expectancy of continued employment, and that is an injury to an interest which the law will protect against invasion by acts themselves unlawful, such as the denial of a federal privilege."

We submit the decision of the Circuit Court of Appeals for the Tenth Circuit in this case in connection with this point is in conflict with the decisions above cited and the general law. It presents an important question of federal law which has not been, but should be, settled by this Court. It is a question that applies to every person in this nation who works for his living and who may be called by the government as a witness to testify against his employer.

POINT 4

Where a Collective Bargaining Agreement Between a Union and an Employer Permits the Contract to be Cancelled on Thirty Days' Notice in Writing, the Employer May Not Cancel the Contract as to an Individual Employee.

The contract provides: "2. This agreement shall be and remain in force and effect until cancelled by either party hereto upon thirty days notice in writing to the other party." (R. 11). The contract has been in effect since June of 1937 (R. 16). The Court below held that the right of recovery of the petitioners was limited to thirty days wages, or the sum of Five Hundred Dollars, in the following language:

> "The contract with the employees' bargaining representative provided that it could be terminated by either party by giving thirty days notice in writing. Where a contract of employment expressly empowers an employer to terminate the contract upon giving notice, recovery for wrongful breach is limited to the notice period. The complaint alleged that each applicant was receiving a salary which together with other valuable incidents to his job was of the value of $500 per month. Under the provisions of the contract, one month's salary was the maximum amount recoverable for breach of contract."

(R. 27.)

The Court in support of the statement cited the case of *F. W. Woolworth* v. *Peterson*, 78 F. (2d) 47, from the Tenth Circuit, and the case of *Olsen* v. *Arabian American Oil Company*, 194 F. (2d) 477, from the Second Circuit. Each case involved an individual contract of employment, and did not involve a collective bargaining agreement.

The decision of the Court below is in direct conflict with the decision of the United States Court of Appeals for the

Fifth Circuit in the case of *Yazoo & M.V.R. Co.* v. *Webb*, 64 F. (2d) 902, where that Court in passing on a collective bargaining agreement containing a cancellation clause said:

> "We reject the contention that if Webb be under the wage agreement with the Brotherhood of Trainmen that it was abrogated as to him by its own terms thirty days after notice that his wages were changed. The provisions for abrogation involves the agreement as a whole and not its application to the wages of some one employee. The agreement aims at uniformity of treatment and cannot be dissipated by piecemeal. The notice contemplated by it is one in writing and posted in the bulletin board for the information of all, or at least one given to the brotherhood which signed the agreement. Webb's rights are not to be disposed of on the basis of an abrogation of the wage agreement."

It is perfectly obvious that the Court was in error in its holding in this respect. These collective bargaining agreements govern the terms and conditions of the employment of a large percentage of the working people of the United States. They are the very foundation of our modern economic system. These cancellation provisions appear in almost all of these collective bargaining agreements. The effect of the holding was to permit the respondent in this case to discharge its employees by cancelling the contract as to them only, thereby limiting their liability to $500.00 for breach of contract, yet retaining the benefits of their contract with the union which had been in force since 1937. We do not believe it to be the law that a collective bargaining agreement may be terminated piecemeal under such a cancellation clause. This question is certainly one of wide importance in the industrial life of America. There is a conflict between the decision of the Tenth Circuit in this case and the decision of the Fifth Circuit in the *Yazoo* case, *supra*, that cannot be reconciled. Its importance cannot be

minimized because it affects every collective bargaining agreement in existence.

Conclusion

We respectfully submit that a Writ of Certiorari should be issued, and that upon the hearing, the judgment of the United States District Court for the District of New Mexico and of the United States Court of Appeals for the Tenth Circuit in this case be reversed.

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